

**2013 DRAFTING REQUEST**

**Assembly Amendment (AA-AB391)**

Received:	10/23/2013	Received By:	mkunkel
Wanted:	As time permits	Same as LRB:	a1068
For:	Scott Krug (608) 266-0215	By/Representing:	Randy Thorson
May Contact:		Drafter:	mkunkel
Subject:	Trade Regulation - other	Addl. Drafters:	
		Extra Copies:	MPG

Submit via email: YES  
Requester's email: Rep.Krug@legis.wisconsin.gov  
Carbon copy (CC) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Definition of "novelty lighter"

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**Instructions:**

See attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mkunkel 10/23/2013			_____			
/P1	mkunkel 11/1/2013	evinz 10/23/2013	rschluet 10/24/2013	_____	sbasford 10/24/2013		
/1		evinz 11/1/2013	rschluet 11/1/2013	_____	lparisi 11/1/2013	lparisi 11/1/2013	

FE Sent For:

**<END>**

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Wanted: As time permits

Same as LRB:

For: Scott Krug (608) 266-0215

By/Representing: Randy Thorson

May Contact:

Drafter: mkunkel

Subject: Trade Regulation - other

Addl. Drafters:

Extra Copies: MPG

Submit via email: YES

Requester's email: Rep.Krug@legis.wisconsin.gov

Carbon copy (CC) to:

**Pre Topic:**

No specific pre topic given

**Topic:**

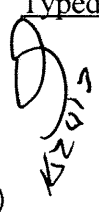
Definition of "novelty lighter" ✓

**Instructions:**

See attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/?	mkunkel	pl eev 10/23/13		_____	_____		
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FE Sent For:

&lt;END&gt;

## Kunkel, Mark

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**From:** Kunkel, Mark  
**Sent:** Thursday, October 17, 2013 4:32 PM  
**To:** david.baker@dhbakerlaw.com  
**Cc:** Thorson, Randy  
**Subject:** RE: Letter with comments on Assembly Bill 391

Mr. Baker:

I can amend the bill as requested and include the new exception. However, note that the new exception refers to a "standard" lighter, but does not specify what constitutes a "standard" lighter. Therefore, enforcement officials will have to determine whether or not a lighter is a "standard" lighter. If that is an easy determination to make, then it may not be problematic to refer to a "standard" lighter. Nevertheless, it would be helpful for me to get your input on this issue before I proceed.

Thank you,

Mark Kunkel  
Legislative Reference Bureau  
(608) 266-0131

---

**From:** Rep.Krug  
**Sent:** Thursday, October 17, 2013 12:38 PM  
**To:** Kunkel, Mark  
**Cc:** david.baker@dhbakerlaw.com  
**Subject:** FW: Letter with comments on Assembly Bill 391

Mark,

Could you please make this requested change to the draft?

If you have questions or concerns please contact me.

Representative Krug has no issue with you speaking to Mr. Baker directly if that would be helpful.

Thank you.

Randy Thorson  
Research Assistant to  
**Scott Krug**  
*State Representative*  
72<sup>nd</sup> Assembly District

---

**From:** David Baker [<mailto:david.baker@dhbakerlaw.com>]  
**Sent:** Thursday, October 17, 2013 11:23 AM  
**To:** Rep.Krug; Rep.Bies  
**Cc:** david.baker@lighterassociation.org  
**Subject:** Letter with comments on Assembly Bill 391

Dear Representatives Krug and Bies:

I am attaching a letter from the U.S. Lighter Association requesting a modest wording change to Section 1 of your bill banning novelty lighters. Please be assured that the Association supports banning novelty lighters and has supported similar legislation in the past. What we are raising is really a drafting issue.

Thank you for your consideration of our concerns.

Very truly yours,

David H. Baker  
General Counsel

**Lighter Association**

5614 Connecticut Avenue, N.W.  
Washington, D.C. 20015  
[www.lighterassociation.org](http://www.lighterassociation.org)

202 253 4347 Tel  
202 330 5092 Fax

[david.baker@lighterassociation.org](mailto:david.baker@lighterassociation.org)  
[david.baker@dhbakerlaw.com](mailto:david.baker@dhbakerlaw.com)

# **Lighter** **Association Inc.**



[www.lighterassociation.org](http://www.lighterassociation.org)

October 18, 2013

The Honorable Scott Krug  
Wisconsin State Assembly  
1414 Akron Avenue  
Neshkoro, WI 54457

The Honorable Garey Bies  
Wisconsin State Assembly  
2520 Settlement Road  
Sister Bay, WI 54234

**Re: Assembly Bill 391 – The Display and Sale of Novelty Lighters**

Dear Representatives Krug and Bies:

The Lighter Association is the trade association of the U.S. lighter industry. Our members all have some U.S. nexus and directly, or indirectly, employ about 10,000 workers in the U.S. Representative members of the association include BIC, Calico Brands and Zippo – all of whom are large employers in the U.S. Our members are responsible for the manufacture or distribution of about 600 million lighters in the U.S. every year. Ironically, despite the fact that most consumer products today are made in China, both BIC and Zippo still manufacture lighters at their factories in Connecticut and Pennsylvania, respectively, and provide important jobs to U.S. workers.

The primary focus of the Lighter Association is stricter, but fair, safety regulation for lighters. The Association was formed in 1986, largely in response to the issue of young children playing with lighters, and was very significantly involved in the drafting the first child-resistant lighter standard in the world. The U.S. Consumer Product Safety Commission subsequently adopted two child-resistant lighter regulations based upon the draft document tendered by the Association. In addition, the Lighter Association has been involved with lighter safety issues in Canada, Mexico and Europe.

About ten years ago, the Lighter Association first became aware of the issue of lighters being distributed that resembled toys. These lighters, for some reason, became known as novelty lighters, although in fact, their major characteristic is that they are toy-like in nature. At that time, our Board of Directors concluded that there was absolutely no reason to distribute lighters that resemble toys and are potentially attractive to children. For this reason, we drafted and posted on our website the first “model” bill to ban novelty lighters. Shortly after posting that bill, we learned that the National Association of State

Fire Marshals ("NASFM") had drafted a similar model bill banning novelty lighters. See attached Appendix A. After reviewing that bill, we dropped our bill in favor of the more broadly based fire marshal bill. Since that time (circa 2008), every state bill enacted has been largely based upon the NASFM bill.

The Lighter Association has testified in support of every state bill proposed to date. Our testimony in support of the recently enacted New York State law, and our letter in support of the recently enacted Indiana law, are attached as Exhibit B. Our basic position is that lighters are clearly not intended to be used by children, and making lighters that are very specifically designed to look like toys, and be attractive to children, is absurd. There is no need for such lighters in the market place. Consumers have many other good options for a source of ignition.

In reviewing your bill, the drafter has made one significant change from the NASFM bill. In Section 1, there is a limited exclusion for lighters with "a logo, label, decal, artwork, or a heat shrinkable sleeve." See language in inset and italics below:

*1. The device is designed to resemble a cartoon character, toy, gun, watch musical instrument, vehicle, animal, food, or beverage, **unless the resemblance is solely the result of printing or decoration with a logo, label, decal, artwork, or a heat shrinkable sleeve.***

This language means that the local fire marshal, sheriff, or other enforcement official, is going to have to make a very discretionary decision whether the lighter resembles a toy based upon the design of the product (typically its shape), or based upon a logo, label, decal, artwork, etc. Since at least one third of all lighters sold in the U.S. have some type of artwork, this language will require Wisconsin enforcement officials to review the artwork on thousands of different lighters. This review process will likely delay the sale of regular lighters made by U.S. workers and routinely sold throughout the fifty states. This review process is an unnecessary step and can be easily avoided by excluding these lighters as has been done in other states.

We urge you to place the standard exception for lighters with artwork in Section 2 of your bill, as it is in the model NASFM bill. See language in inset and italics below:

*"Novelty lighter" does not include:*

- A. A lighter manufactured prior to January 1, 1980;*
- B. A lighter incapable of being fueled or lacking a device necessary to produce combustion or a flame;*
- C. Any mechanical or electrical device primarily used to ignite fuel for fireplaces or for charcoal or gas grills; or*
- D. Standard disposable and refillable lighters that are printed or decorated with logos, labels, decals or artwork, or heat shrinkable sleeves.*



The difference is subtle, but under the language of your current bill, these lighters would need to be reviewed. Under the model fire marshal bill, these lighters would be clearly excluded.

The change that we are requesting could be easily accommodated by moving the exception for artwork in Section 1 of your bill, to Section 2(b) of your bill. See language in inset and italics below:

*2.(b) "Novelty lighter does not include a device manufactured before 1980, or a device intended for use in igniting a fire in a fireplace or wood stove or in a charcoal or gas grill OR A STANDARD DISPOSABLE OR REFILLABLE LIGHTER THAT IS PRINTED OR DECORATED WITH LOGOS, LABELS, DECALS OR ARTWORK, OR HEAT SHRINKABLE SLEEVES.*

We would welcome an opportunity to talk with you further about this issue. I can be reached at 202 253 4347, or [david.baker@lighterassociation.org](mailto:david.baker@lighterassociation.org).

Also, we request an opportunity to testify at any hearings on this legislation.

Finally, while not a core issue for us, the national trend is to include grill lighters in these banning bills. Arkansas is trying to amend its existing law to include grill lighters and New York discussed the issue during its consideration of their new law. We would encourage you to include grill lighters in your bill (not exclude them as has been done in Section 2).

We have sent a similar communication Senators Lassa and Lehman regarding their novelty lighter bill, Senate Bill 303.

Thank you for your consideration of our views on this important issue to the U.S. lighter industry.

Very truly yours,



David H. Baker  
General Counsel

DHB:bd  
Exhibits (3)

A



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## The National Association of State Fire Marshals

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Safety ProjectResidential Fire Safety  
Institute

## Toylike / Novelty Lighters

The National Association of State Fire Marshals (NASFM) supports banning the sale of novelty/toylike lighters. Here are resources to help NASFM members and others to address this problem. Check back for new information!

- [NASFM Model State Bill](#) - An Act to Prohibit the Retail Sale and Distribution of Novelty/Toylike Lighters
- [Resolution by the NASFM Membership](#) in Support of Banning the Sale and Use of Novelty Lighters, July 2007

### Educational Information

- [Background on the issue of children and toylike/novelty lighters](#)
- [Artwork and text of a handout on the problem of novelty/toylike lighters](#)

### Laws in the States:

The US Fire Administration website maintains an updated status of state legislation to ban or limit the sale of toylike/novelty lighters, along with links to the text of bills and laws, at [http://www.usfa.fema.gov/citizens/home\\_fire\\_prevention/noveltylighters/](http://www.usfa.fema.gov/citizens/home_fire_prevention/noveltylighters/).

### Activity in the 111th US Congress:

The "Protect Children from Dangers Lighters Act of 2009" has been introduced as [S. 723](#) in the Senate and [HR 2050](#) in the House of Representatives. Both bills would declare novelty lighters a banned hazardous substance under the Federal Hazardous Substances Act, which is administered by the US Consumer Product Safety Commission.

### Links to Other Information on Toylike/Novelty Lighters:

- Oregon State Fire Marshals Office's website: [http://www.oregon.gov/OPS/SFM/Novelty\\_Toylike\\_Lighters.shtml](http://www.oregon.gov/OPS/SFM/Novelty_Toylike_Lighters.shtml)
- U.S. Fire Administration website: [http://www.usfa.dhs.gov/fireservice/subjects/arson/OSerson\\_awareness.shim](http://www.usfa.dhs.gov/fireservice/subjects/arson/OSerson_awareness.shim)
- Idea Bank Campaign, "No Novelty Lighters" website: <http://www.ideaibank.com/pse/NoveltyLighters.html>
- National PTA 2010 Resolution on The Dangers of Novelty Lighters
- [How to Ban Novelty \(Toy-Like\) Lighters: One state's successful effort to protect its children. By John Dean, Maine State Fire Marshal](#)

NASFM Staff Contact: Karen Deppa ([Kfermico@aol.com](mailto:Kfermico@aol.com)) or 202-737-1226 ext. 15)

## Bulletin Board

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### NASFM Model State Bill – Sale of Novelty Lighters

On March 24, 2008, the Governor of Maine signed into law Bill #LD2081, Public Law, Chapter 510, 123<sup>rd</sup> Maine State Legislature, An Act To Prohibit the Retail Sale and Distribution of Novelty Lighters. The Model Bill below is adapted from the Maine law.

#### **An Act To Prohibit the Retail Sale and Distribution of Novelty Lighters**

**Whereas**, novelty lighters have features that are attractive to children, including visual effects, flashing lights, musical sounds and toy-like designs; and

**Whereas**, the federal Consumer Product Safety Commission has recalled thousands of novelty lighters since 1996 due to their danger to public safety; and

**Whereas**, fire setting by juveniles has been identified as the fastest growing fire threat in the United States, with more than 300 people killed annually, 30% of whom are children, and almost \$1 billion in property destroyed; and

**Whereas**, in \_\_\_\_\_ (state) \_\_\_\_\_ fire setting by juveniles has resulted in several deaths and millions of dollars in property damage and destruction; and

**Whereas**, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of \_\_\_\_\_ (state) \_\_\_\_\_ and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

**Be it enacted by the People of the State of \_\_\_\_\_ as follows:**

**Section 1. Definition.** For purposes of this Act, “novelty lighter” means a mechanical or electrical device typically used for lighting cigarettes, cigars or pipes that is designed to resemble a cartoon character, toy, gun, watch, musical instrument, vehicle, animal, food or beverage, or similar articles, or that plays musical notes, or has flashing lights for entertainment or has other entertaining features. A novelty lighter may operate on any fuel, including butane, isobutane or liquid fuel. “Novelty lighter” does not include:

A. A lighter manufactured prior to January 1, 1980;

B. A lighter incapable of being fueled or lacking a device necessary to produce combustion or a flame;

C. Any mechanical or electrical device primarily used to ignite fuel for fireplaces or for charcoal or gas grills; or

D. Standard disposable and refillable lighters that are printed or decorated with logos, labels, decals or artwork, or heat shrinkable sleeves. ✓

**Section 2. Prohibition; penalty.** A person may not sell at retail, offer for retail sale or distribute for retail sale or promotion in this State a novelty lighter. A person who violates this section commits a civil violation for which a fine of not more than \$500 may be imposed.

**Section 3. Exception.** The prohibition specified in section 2 does not apply to the transportation of novelty lighters through this State or the storage of novelty lighters in a warehouse or distribution center in this State that is closed to the public for purposes of retail sales.

**Section 4. Enforcement.** This section may be enforced by the State Fire Marshal's Office; a state, county or municipal law enforcement officer; or a municipal code enforcement officer.

**Section 5. Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved.



B 1

**STATEMENT OF**  
**DAVID H. BAKER, GENERAL COUNSEL**  
**ON BEHALF OF THE LIGHTER ASSOCIATION**

---

My name is David H. Baker and I have served as the General Counsel of the U.S. Lighter Association since its formation in 1986. The Lighter Association is the national trade association of the disposable and refillable lighter industry, including cigarette lighters and grill lighters. Our members manufacture and/or distribute approximately 500 million lighters in the U.S. each year. Based upon our annual industry survey and a review of import data, we estimate that we represent about 60% of the lighter sales in the U.S. each year (the total market is slightly in excess of 900 million units). Our members manufacture products both here in the U.S, including nearby Pennsylvania and Connecticut, and abroad including, China, France, the Netherlands, the Philippines and Thailand. We estimate that the U.S. lighter industry, directly or indirectly, provides approximately 5,000 full time jobs in this country.

I am here today to offer my strong support for A. 8402, a bill to prohibit the retail sale and distribution of novelty lighters. While novelty lighters represent a very small percentage of the overall market for lighters (we estimate that less than 5 million lighters are sold each year), they serve absolutely no purpose and present a significant safety concern. We have supported similar bills across the country, including the proposed New York City Ordinance which we testified in support of in 2009. At this point, our information is that about fifteen states have laws banning the sale of novelty lighters.

Our only concern with these bills is that they not unintentionally ban regular lighters with graphics on the body of the lighter. Section 391R (E)(II)(D) of this bill, clearly excludes disposable or refillable lighters with “a logo, label, decal, or artwork printed thereon ~~on~~ on heat shrinkable sleeves attached thereto...” This exclusion is consistent with the model National Association of State Fire Marshal (“NASFM”) bill banning novelty lighters, which we support, and banning bills in most states, including Oregon, which was one of the leaders on this fire safety issue.

Our lighter products are clearly different from lighters that resemble spaceships, ice cream cones, cartoon characters, cars and trucks, musical instruments, having flashing lights and/or emit

audio sounds, etc. Toy-like novelty lighters should be banned in all fifty states, in our view. There is absolutely no reason to market such a product. A lighter in the shape of an ice cream cone, spaceship, or truck, or that has flashing lights or emit sounds, serves no adult need. And children certainly should not be encouraged to use lighters. With the approximately 900 million other lighters in the marketplace, adults already have a wide enough selection of products to choose from.

In closing, let me leave the Committee with this simple message:

**LIGHTERS ARE ADULT PRODUCTS – NOT TOYS.**

**CHILDREN SHOULD NEVER BE ENCOURAGED  
TO USE LIGHTERS.**

**AND TOY-LIKE NOVELTY LIGHTERS SHOULD  
BE BANNED.**

I commend the sponsors and their staff for their excellent work on this bill.

David H. Baker, General Counsel

STATE OF NEW YORK

8402

2011-2012 Regular Sessions

IN ASSEMBLY

June 15, 2011

Introduced by M. of A. DINOWITZ, GABRYSZAK, HOOPER, GALEF, COOK, MAISEL, TOBACCO, BARCLAY, LIFTON, JAFFEE, MARKEY, P. RIVERA, KELLNER, M. MILLER -- Multi-Sponsored by -- M. of A. BOYLE, BROOK-KRASNY, CALHOUN, DUPREY, MAGEE, McENENY, ROBINSON, RUSSELL, WEISENBERG -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to prohibiting the retail sale and distribution of novelty lighters

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The general business law is amended by adding a new section  
2 391-r to read as follows:

3 S 391-R. SALE AND DISTRIBUTION OF NOVELTY LIGHTERS PROHIBITED. 1.  
4 DEFINITIONS:

5 (A) "AUDIO EFFECTS" INCLUDES MUSIC, ANIMAL SOUNDS, WHISTLES, BUZZERS,  
6 BEEPERS OR OTHER NOISES NOT TYPICALLY CAUSED BY OR PERTINENT TO THE  
7 FLAME-PRODUCING FUNCTION OF THE LIGHTER.

8 (B) "DISTRIBUTE" MEANS TO:

9 (I) DELIVER TO A PERSON OTHER THAN THE PURCHASER, FOR RETAIL SALE; OR  
10 (II) PROVIDE AS PART OF A COMMERCIAL PROMOTION OR AS A PRIZE OR PREMI-  
11 UM.

12 (C) "IMPORTER" MEANS A PERSON WHO CAUSES A LIGHTER TO ENTER THIS STATE  
13 FROM A MANUFACTURING, WHOLESALE, DISTRIBUTION OR RETAIL SALES POINT  
14 OUTSIDE THIS STATE, FOR THE PURPOSE OF SELLING OR DISTRIBUTING THE  
15 LIGHTER WITHIN THIS STATE OR WITH THE RESULT THAT THE LIGHTER IS SOLD OR  
16 DISTRIBUTED WITHIN THIS STATE.

17 (D) "LIGHTER" MEANS A MECHANICAL OR ELECTRICAL DEVICE OF A TYPE TYPI-  
18 CALLY USED FOR IGNITING TOBACCO PRODUCTS BY USE OF A FLAME.

19 (E) "NOVELTY LIGHTER":

20 (I) MEANS A MECHANICAL OR ELECTRICAL DEVICE MANUFACTURED FOR THE  
21 PURPOSE OF PRODUCING A FLAME TO LIGHT CIGARETTES, CIGARS OR PIPES AND  
22 WHICH, DUE TO THE PHYSICAL OR AUDIO FEATURES OF THE DEVICE, EXCLUDING

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

LBD06212-03-1

A. 8402

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1 ITS CAPABILITY OF PRODUCING A FLAME, WOULD REASONABLY BE EXPECTED TO  
2 CAUSE THE LIGHTER TO BE APPEALING OR ATTRACTIVE TO A CHILD UNDER THE AGE  
3 OF TEN INCLUDING, BUT NOT LIMITED TO, LIGHTERS THAT RESEMBLE A CARTOON  
4 CHARACTER, TOY, GUN, WATCH, MUSICAL INSTRUMENT, VEHICLE, ANIMAL, BEVER-  
5 AGE, SPORTING EQUIPMENT OR THAT IS CAPABLE OF PLAYING MUSICAL NOTES OR  
6 DISPLAYING FLASHING LIGHTS; AND

7 (II) DOES NOT INCLUDE:

8 (A) A LIGHTER MANUFACTURED BEFORE JANUARY FIRST, NINETEEN HUNDRED



9 EIGHTY; OR  
10 (B) A LIGHTER THAT HAS BEEN RENDERED PERMANENTLY INCAPABLE OF PRODUC-  
11 ING A FLAME OR OTHERWISE CAUSING COMBUSTION; OR  
12 (C) ANY MECHANICAL OR ELECTRICAL DEVICE PRIMARILY USED TO IGNITE FUEL  
13 FOR FIREPLACES OR FOR CHARCOAL OR GAS GRILLS; OR  
14 (D) A DISPOSABLE OR REFILLABLE LIGHTER WITH A LOGO, LABEL, DECAL OR  
15 ARTWORK PRINTED THEREON OR ON HEAT SHRINKABLE SLEEVES ATTACHED THERETO  
16 BUT WHICH DOES NOT OTHERWISE RESEMBLE A LIGHTER DESCRIBED IN SUBPARA-  
17 GRAPH (I) OF THIS PARAGRAPH. ✓  
18 (F) "SELL" MEANS TO PROVIDE OR PROMISE TO PROVIDE TO A WHOLESALE,  
19 RETAIL, MAIL-ORDER OR OTHER PURCHASER IN EXCHANGE FOR CONSIDERATION.  
20 2. NO PERSON, FIRM, PARTNERSHIP, ASSOCIATION OR CORPORATION SHALL  
21 DISTRIBUTE, SELL AT RETAIL OR OFFER FOR RETAIL SALE IN THIS STATE, OR TO  
22 ANY PERSON LOCATED IN THIS STATE, A NOVELTY LIGHTER.  
23 3. THE DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES SHALL  
24 ESTABLISH AND PUBLICIZE A TOLL FREE TELEPHONE HOTLINE NUMBER TO RECEIVE  
25 INFORMATION FROM THE PUBLIC ABOUT SUSPECTED VIOLATIONS OF THIS SECTION.  
26 THE DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES SHALL PROVIDE  
27 INFORMATION ON ITS AGENCY WEBSITE REGARDING THIS SECTION AND THE DANGERS  
28 OF NOVELTY LIGHTERS, AND PROVIDE THE OPPORTUNITY FOR PERSONS SUSPECTING  
29 VIOLATIONS OF THIS SECTION TO TRANSMIT SUCH INFORMATION TO THE DIVISION  
30 THROUGH THE INTERNET.  
31 4. WHENEVER ANY POLICE OFFICER DESIGNATED IN SECTION 1.20 OF THE CRIM-  
32 INAL PROCEDURE LAW OR A PEACE OFFICER DESIGNATED IN SUBDIVISION FOUR AND  
33 SUBDIVISION SEVENTY-NINE PERTAINING TO THE OFFICE OF FIRE PREVENTION AND  
34 CONTROL, OF SECTION 2.10 OF SUCH LAW, ACTING PURSUANT TO HIS OR HER  
35 SPECIAL DUTIES, SHALL DISCOVER A NOVELTY LIGHTER IN VIOLATION OF THIS  
36 SECTION, SUCH OFFICER IS HEREBY AUTHORIZED AND EMPOWERED FORTHWITH TO  
37 SEIZE AND TAKE POSSESSION OF SUCH ITEMS. SUCH SEIZED ITEMS SHALL BE  
38 TURNED OVER TO THE STATE FIRE ADMINISTRATOR OR HIS DESIGNEE.  
39 5. ANY PERSON WHO VIOLATES THIS SECTION SHALL BE SUBJECT TO A CIVIL  
40 PENALTY AS FOLLOWS:  
41 (A) NOT MORE THAN TEN THOUSAND DOLLARS IF THE PERSON IS A MANUFACTURER  
42 OR IMPORTER OF LIGHTERS.  
43 (B) NOT MORE THAN ONE THOUSAND DOLLARS IF THE PERSON IS A WHOLESALER  
44 OF LIGHTERS OR DISTRIBUTES LIGHTERS BY MEANS OTHER THAN DISTRIBUTION  
45 DIRECTLY TO CONSUMERS.  
46 (C) NOT MORE THAN FIVE HUNDRED DOLLARS IF THE PERSON IS:  
47 (I) A RETAIL SELLER OF LIGHTERS; OR  
48 (II) A PERSON DISTRIBUTING LIGHTERS, IF THE PERSON IS OTHER THAN A  
49 MANUFACTURER, IMPORTER OR WHOLESALER.  
50 (D) POSSESSION OF EACH NOVELTY LIGHTER IN VIOLATION OF THIS SECTION  
51 SHALL CONSTITUTE A SEPARATE VIOLATION. IF A PERSON CONTINUES TO VIOLATE  
52 THIS SECTION AFTER BEING GIVEN WRITTEN NOTICE OF THE VIOLATION, EACH DAY  
53 THAT THE VIOLATION CONTINUES IS A SEPARATE OFFENSE SUBJECT TO A CIVIL  
54 PENALTY.

A. 8402

3

1 6. THIS SECTION SHALL NOT APPLY TO A MANUFACTURER, IMPORTER, DISTRIBU-  
2 TOR OR WHOLESALE SELLER WHO CAN DEMONSTRATE THAT THE NOVELTY LIGHTERS  
3 ARE NOT INTENDED FOR SALE WITHIN THE STATE.  
4 7. THE DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES IS HEREBY  
5 AUTHORIZED TO PROMULGATE SUCH RULES AND REGULATIONS AS ARE DEEMED NECES-  
6 SARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION, INCLUDING PRESCRIBING  
7 MINIMUM STANDARDS FOR ADMINISTRATION AND ENFORCEMENT OF THIS SECTION.  
8 THE DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES MAY ASSESS  
9 MONETARY PENALTIES AS ESTABLISHED HEREIN, SUCH PENALTIES COMMENCING ON  
10 THE FIRST DAY FOLLOWING THE ABATEMENT DATE SPECIFIED IN AN ORDER, AND  
11 CONTINUING UNTIL THE VIOLATION HAS BEEN ABATED. ABATEMENT OF VIOLATIONS  
12 SHALL BE VERIFIED BY THE STATE FIRE ADMINISTRATOR.

13 8. IN ADDITION TO THE ENFORCEMENT AUTHORITY GRANTED TO THE DIVISION OF  
14 HOMELAND SECURITY AND EMERGENCY SERVICES IN THIS SECTION, WHENEVER THERE  
15 SHALL BE A VIOLATION OF THIS SECTION, AN APPLICATION MAY BE MADE BY THE  
16 ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK, TO  
17 A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEEDING TO ISSUE  
18 AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE  
19 DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATION; AND IF  
20 IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE  
21 DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION, AN INJUNCTION MAY BE  
22 ISSUED BY THE COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER  
23 VIOLATIONS, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN  
24 INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE  
25 ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF  
26 SUBDIVISION (A) OF SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRACTICE  
27 LAW AND RULES, AND DIRECT RESTITUTION. WHENEVER THE COURT SHALL  
28 DETERMINE THAT A VIOLATION OF THIS SECTION HAS OCCURRED, THE COURT MAY  
29 IMPOSE A CIVIL PENALTY AS SET FORTH IN SUBDIVISION FIVE OF THIS SECTION.  
30 IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL  
31 IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT  
32 FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW  
33 AND RULES.

34 S 2. This act shall take effect immediately. Notwithstanding such  
35 effective date, no person shall be subject to a civil penalty for any  
36 violation that occurs before the ninetieth day after such effective  
37 date.

# Lighter Association Inc.



B 2  
[www.lighterassociation.org](http://www.lighterassociation.org)

January 13, 2012

The Honorable Randy Frye  
200 W. Washington Street  
Indianapolis, IN 46204

**Re: Indiana House Bill No. 1056, as Amended on January 9, 2012**

Dear Representative Frye:

The Lighter Association is the national trade association of the cigarette lighter and grill lighter industry. Our members manufacture and distribute both disposable and refillable lighters. The association includes as members such well known companies as BIC, Scripto, Swedish Match and Zippo. Our estimate is that the US market for lighters is slightly in excess of 900 million lighters each year and that our members sell approximately 500 to 600 million lighters each year. The Lighter Association regularly participates before legislative and regulatory bodies on lighter safety issues.

The Lighter Association submits this letter in support of amended Indiana House Bill 1056 that prohibits the retail sale and distribution of toy-like novelty lighters and sets penalties for manufacturers, distributors and retailers that continue to sell them. This bill follows the very balanced model bill established by the National Association of State Fire Marshals ([www.firemarshals.org](http://www.firemarshals.org)) and the federal bill introduced in 2009 by Senators Wyden, Dodd and Collins. We are pleased that you have clearly stated that disposable and refillable lighters with artwork are not considered novelty lighters. This is consistent with the Fire Marshals' bill and all of the other state laws enacted to date.

The Lighter Association was an early proponent of a ban on novelty lighters and is pleased to see the State of Indiana take action on this important issue. The U.S. lighter industry strongly supports this bill and commends you for your hard work in protecting consumers in Indiana from novelty lighters.

**Lighters are adult products, not toys. Children should not be using lighters at all. Toy-like novelty lighters should be banned.** This bill admirably achieves this goal.

Thank you for your consideration of our views.

Very truly yours,

David H. Baker  
General Counsel

Delete everything after the enacting clause and insert the following:

**SECTION 1. IC 22-12-11 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:**

**Chapter 11. Novelty Lighters**

**Sec. 1. It is the intent of the general assembly, by this chapter, to protect the public welfare and promote safety throughout Indiana. In enacting this chapter, the general assembly finds the following:**

- (1) novelty lighters have features that are attractive to children, including visual effects, flashing lights, musical sounds and toy-like designs;
- (2) the federal Consumer Product Commission has recalled thousands of novelty lighters since 1996 due to the dangers of novelty lighters to public safety; and
- (3) in Indiana and the United States fire setting by juveniles has resulted in several deaths and millions of dollars in property damage and destruction.

**Sec. 2. As used in this chapter, "novelty lighter" means a mechanical or electrical device typically used for lighting cigarettes, cigars or pipes that is designed to resemble a cartoon character, toy, gun, watch, musical instrument, vehicle, animal, food or beverage, or similar articles, or that plays musical notes, or has flashing lights for entertainment or has other entertaining features. A novelty lighter may operate on any fuel, including butane, isobutane or liquid fuel. The term does not include:**

- (1) A lighter manufactured prior to January 1, 1980.
- (2) A lighter incapable of being fueled or lacking a device necessary to produce combustion or a flame.
- (3) Any mechanical or electrical device primarily used to ignite fuel for fireplaces or for charcoal or gas grills.
- (4) Standard disposable and refillable lighters that are printed or decorated with logos, labels, decals or artwork, or heat shrinkable sleeves. ✓

**Sec. 3. (a) An individual may not:**

- (1) sell at retail;
- (2) offer for retail sale; or
- (3) distribute for retail sale or promotion in Indiana a novelty lighter.

**(b) An individual who violates this section commits a Class C infraction.**

**Sec. 4. The prohibition in section 3 does not apply to the transportation of novelty lighters through Indiana or the storage of novelty lighters in a warehouse or distribution center in Indiana that is closed to the public for purposes of retail sales.**

**Sec. 5. This chapter may be enforced by:**

- (1) the state fire marshal or the state fire marshal's designee;
- (2) a state, county or municipal law enforcement officer; or
- (3) a municipal code enforcement officer.

**Sec. 6. The commission may adopt rules under IC 4-22-2 to implement this chapter.**

**SECTION 2. An emergency is declared for this act.**

(Reference is to HB 1056 as introduced.)

Proposed amendment to HB 1056. Makes the retail sale or distribution of a novelty lighter a Class C infraction. Provides that the state fire marshal or a designated law enforcement officer may enforce novelty lighter laws. Authorizes the fire prevention and building safety commission to adopt rules to implement the novelty lighter law.



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRBa1067/P1

MDK:.....

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**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**  
**ASSEMBLY AMENDMENT ,**  
**TO ASSEMBLY BILL 391**

IN  
10-23

- 1 At the locations indicated, amend the bill as follows:
- 2 **1.** Page 2, line 7: delete “beverage, unless the resemblance is” and substitute
- 3 “beverage.”.
- 4 **2.** Page 2, line 8: delete lines 8 and 9.
- 5 **3.** Page 2, line 12: delete lines 12 to 14 and substitute:
- 6 “(b) “Novelty lighter” does not include any of the following:
- 7 1. A device manufactured before 1980.
- 8 2. A device intended for use in igniting a fire in a fireplace or wood stove or in
- 9 a charcoal or gas grill.
- 10 3. A standard disposable or refillable lighter that is printed or decorated with
- 11 logos, labels, decals, artwork, or heat-shrinkable sleeves.”.

## Kunkel, Mark

---

**From:** David Baker <david.baker@dhbakerlaw.com>  
**Sent:** Thursday, October 24, 2013 10:50 AM  
**To:** Kunkel, Mark  
**Subject:** Assembly Bill 391 To Ban Novelty Lighters

Dear Mark:

Thank you for your email, and your very insightful comment. Let me try and give you some background on the terms "disposable" lighter and "refillable" lighter.

Just under one billion disposable lighters are sold every year in the US, on the average. The numbers vary from around 850 million in more recent years, to close to the high 900 million, prior to the downturn in 2008. A disposable lighter is one that is sold with a small reservoir of fuel in the lighter, typically retails for less than \$1 and is designed to be thrown away. The term is so well known and recognized that many states have dropped the word "standard" in the NASFM model bill and simply said "Disposable or Refillable" lighters with artwork.

Somewhere in the range of about 50 million refillable lighters are sold every year in the US, on average. The numbers vary a bit because there are now inexpensive refillable lighters from Asia that retail for \$1 to \$2, are rarely refilled, but have a cheap refill valve. However, what most consumers think of refillable lighters are typified by the more expensive metal-bodied Zippo refillable lighter, which is sold without fuel, is designed to be refilled, is used for decades and costs \$8 to \$100 (and more). There are many other similar or even more expensive refillable lighters, including the Cartier, Colibri, Dunhill, Lotus and Xikar brands, however, in terms of numbers sold, Zippo is probably the market leader and sell several million refillable lighters in the US every year. Again, in the lighter, tobacco and sports and recreational trades, the term "Refillable Lighter" is very much understood.

Sometime around 2000, small lighter manufacturers in China began making lighters in the shape of ice cream cones, space ships, watches, even guns, with a gas fuel supply. The lighters numbered in the hundreds of thousands. They were initially called toy lighters, and then the importers, sensing the sales problem with that name, started using the term novelty lighter. We believe that most consumers viewed them as toy type lighters. The word "novelty" does not have much currency with consumers. The first fire injuries reported with novelty lighters occurred in Arkansas circa 2004 and 2005, about the time we drafted our first model bill prohibiting the sale of such lighters. We estimate that a maximum of two million novelty lighters are sold in the US every year today and that the number is in the decline now that at least 15 states have enacted laws banning toy like novelty lighters.

Our view is that while the term novelty lighters is not very well known or understood, the terms standard disposable lighter, or standard refillable lighter, are very well known. The average American owns three or more such lighters.

No state has ever defined the term disposable or refillable lighter. A couple of states have used the NASFM term *standard* disposable or refillable lighter, but most have simply said disposable or refillable lighters because the terms are so well known by the public.

So our view is that an exception for the one billion disposable or refillable lighters sold in the US every year has meaning, without any further definition. And that the word standard is probably not necessary.

The one significant difference between disposable lighters and refillable lighters, of course, is that disposable lighters can not be refueled.

On one occasion I drafted some language referencing standard "flat bodied" disposable and refillable lighters, but many lighters are slightly rounded, so it was rejected.

In summary, we think it is very clear what disposable and refillable lighters are and that the terms need no definition. However, we think that novelty lighters require some definition and that definition should focus on that they resemble other objects in shape and typically are toy like in design.

Finally, if Wisconsin wants to be a leader in this area, no state has included so-called grill or utility lighters in their laws. We would suggest that you eliminate that exception in your current Section 2 b. You might talk to your counterparts in Oregon, where they did not do this (but wished that they did) and I tried to create an interpretation that would include

them in the ban, but it was rejected by their lawyers. The fire community strongly favors including grill lighters, I believe, and the novelty lighter manufacturers are using that exception to create long lighters that are toy like, but they claim they are grill lighters. New York also looked at this issue this past year, but it has been such a hurdle getting that law enacted, they did not want to derail it with this new issue.

I would be happy to talk further by phone (202 253 4347)

Thanks again for your help.

David H. Baker  
General Counsel

## **Lighter Association**

5614 Connecticut Avenue, N.W.  
# 292  
Washington, D.C. 20015  
[www.lighterassociation.org](http://www.lighterassociation.org)

202 253 4347 Tel  
202 330 5092 Fax

[david.baker@lighterassociation.org](mailto:david.baker@lighterassociation.org)

[david.baker@dhbakerlaw.com](mailto:david.baker@dhbakerlaw.com)

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**From:** Kunkel, Mark [mailto:Mark.Kunkel@legis.wisconsin.gov]  
**Sent:** Thursday, October 17, 2013 5:32 PM  
**To:** david.baker@dhbakerlaw.com  
**Cc:** Thorson, Randy  
**Subject:** RE: Letter with comments on Assembly Bill 391

Mr. Baker:

I can amend the bill as requested and include the new exception. However, note that the new exception refers to a "standard" lighter, but does not specify what constitutes a "standard" lighter. Therefore, enforcement officials will have to determine whether or not a lighter is a "standard" lighter. If that is an easy determination to make, then it may not be problematic to refer to a "standard" lighter. Nevertheless, it would be helpful for me to get your input on this issue before I proceed.

Thank you,

Mark Kunkel  
Legislative Reference Bureau  
(608) 266-0131

---

**From:** Rep.Krug  
**Sent:** Thursday, October 17, 2013 12:38 PM  
**To:** Kunkel, Mark  
**Cc:** david.baker@dhbakerlaw.com  
**Subject:** FW: Letter with comments on Assembly Bill 391



Mark,

Could you please make this requested change to the draft?

If you have questions or concerns please contact me.

Representative Krug has no issue with you speaking to Mr. Baker directly if that would be helpful.

Thank you.

Randy Thorson  
Research Assistant to  
**Scott Krug**  
*State Representative*  
72<sup>nd</sup> Assembly District

---

**From:** David Baker [<mailto:david.baker@dhbakerlaw.com>]  
**Sent:** Thursday, October 17, 2013 11:23 AM  
**To:** Rep.Krug; Rep.Bies  
**Cc:** [david.baker@lighterassociation.org](mailto:david.baker@lighterassociation.org)  
**Subject:** Letter with comments on Assembly Bill 391

Dear Representatives Krug and Bies:

I am attaching a letter from the U.S. Lighter Association requesting a modest wording change to Section 1 of your bill banning novelty lighters. Please be assured that the Association supports banning novelty lighters and has supported similar legislation in the past. What we are raising is really a drafting issue.

Thank you for your consideration of our concerns.

Very truly yours,

David H. Baker  
General Counsel

**Lighter Association**  
5614 Connecticut Avenue, N.W.  
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[david.baker@dhbakerlaw.com](mailto:david.baker@dhbakerlaw.com)



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRBa1067/R1  
MDK:eev:rs

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**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**  
**ASSEMBLY AMENDMENT ,**  
**TO ASSEMBLY BILL 391**

Today

No changes

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